

462.357 OFFICIAL CONTROLS: ZONING ORDINANCE.

Subdivision 1. **Authority for zoning.** For the purpose of promoting the public health, safety, morals, and general welfare, a municipality may by ordinance regulate on the earth's surface, in the air space above the surface, and in subsurface areas, the location, height, width, bulk, type of foundation, number of stories, size of buildings and other structures, the percentage of lot which may be occupied, the size of yards and other open spaces, the density and distribution of population, the uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes, and the uses of land for trade, industry, residence, recreation, agriculture, forestry, soil conservation, water supply conservation, conservation of shorelands, as defined in sections 103F.201 to 103F.221, access to direct sunlight for solar energy systems as defined in section 216C.06, flood control or other purposes, and may establish standards and procedures regulating such uses. To accomplish these purposes, official controls may include provision for purchase of development rights by the governing body in the form of conservation easements under chapter 84C in areas where the governing body considers preservation desirable and the transfer of development rights from those areas to areas the governing body considers more appropriate for development. No regulation may prohibit earth sheltered construction as defined in section 216C.06, subdivision 14, relocated residential buildings, or manufactured homes built in conformance with sections 327.31 to 327.35 that comply with all other zoning ordinances promulgated pursuant to this section. The regulations may divide the surface, above surface, and subsurface areas of the municipality into districts or zones of suitable numbers, shape, and area. The regulations shall be uniform for each class or kind of buildings, structures, or land and for each class or kind of use throughout such district, but the regulations in one district may differ from those in other districts. The ordinance embodying these regulations shall be known as the zoning ordinance and shall consist of text and maps. A city may by ordinance extend the application of its zoning regulations to unincorporated territory located within two miles of its limits in any direction, but not in a county or town which has adopted zoning regulations; provided that where two or more noncontiguous municipalities have boundaries less than four miles apart, each is authorized to control the zoning of land on its side of a line equidistant between the two noncontiguous municipalities unless a town or county in the affected area has adopted zoning regulations. Any city may thereafter enforce such regulations in the area to the same extent as if such property were situated within its corporate limits, until the county or town board adopts a comprehensive zoning regulation which includes the area.

Subd. 1a. **Certain zoning ordinances.** A municipality must not enact, amend, or enforce a zoning ordinance that has the effect of altering the existing density, lot-size requirements, or manufactured home setback requirements in any manufactured home park constructed before January 1, 1995, if the manufactured home park, when constructed, complied with the then existing density, lot-size and setback requirements.

Subd. 1b. **Conditional uses.** A manufactured home park, as defined in section 327.14, subdivision 3, is a conditional use in a zoning district that allows the construction or placement of a building used or intended to be used by two or more families.

Subd. 1c. **Amortization prohibited.** Except as otherwise provided in this subdivision, a municipality must not enact, amend, or enforce an ordinance providing for the elimination or termination of a use by amortization which use was lawful at the time of its inception. This subdivision does not apply to adults-only bookstores, adults-only theaters, or similar adults-only businesses, as defined by ordinance.

Subd. 1d. **Nuisance.** Subdivision 1c does not prohibit a municipality from enforcing an ordinance providing for the prevention or abatement of nuisances, as defined in section 561.01, or eliminating a use determined to be a public nuisance, as defined in section 617.81, subdivision 2, paragraph (a), clauses (1) to (9), without payment of compensation.

Subd. 1e. **Nonconformities.** (a) Except as otherwise provided by law, any nonconformity, including the lawful use or occupation of land or premises existing at the time of the adoption of an additional control under this chapter, may be continued, including through repair, replacement, restoration, maintenance, or improvement, but not including expansion, unless:

(1) the nonconformity or occupancy is discontinued for a period of more than one year; or

(2) any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged. In this case, a municipality may impose reasonable conditions upon a zoning or building permit in order to mitigate any newly created impact on adjacent property or water body. When a nonconforming structure in the shoreland district with less than 50 percent of the required setback from the water is destroyed by fire or other peril to greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, the structure setback may be increased if practicable and reasonable conditions are placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.

(b) Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy. A municipality may, by ordinance, permit an expansion or impose upon nonconformities reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, or safety. This subdivision does not prohibit a municipality from enforcing an ordinance that applies to adults-only bookstores, adults-only theaters, or similar adults-only businesses, as defined by ordinance.

(c) Notwithstanding paragraph (a), a municipality shall regulate the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in floodplain areas to the extent necessary to maintain eligibility in the National Flood Insurance Program and not increase flood damage potential or increase the degree of obstruction to flood flows in the floodway.

(d) Paragraphs (d) to (j) apply to shoreland lots of record in the office of the county recorder on the date of adoption of local shoreland controls that do not meet the requirements for lot size or lot width. A municipality shall regulate the use of nonconforming lots of record and the repair, replacement, maintenance, improvement, or expansion of nonconforming uses and structures in shoreland areas according to paragraphs (d) to (j).

(e) A nonconforming single lot of record located within a shoreland area may be allowed as a building site without variances from lot size requirements, provided that:

(1) all structure and septic system setback distance requirements can be met;

(2) a Type I sewage treatment system consistent with Minnesota Rules, chapter 7080, can be installed or the lot is connected to a public sewer; and

(3) the impervious surface coverage does not exceed 25 percent of the lot.

(f) In a group of two or more contiguous lots of record under a common ownership, an individual lot must be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:

(1) the lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minnesota Rules, chapter 6120;

(2) the lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minnesota Rules, chapter 7080, and local government controls;

(3) impervious surface coverage must not exceed 25 percent of each lot; and

(4) development of the lot must be consistent with an adopted comprehensive plan.

(g) A lot subject to paragraph (f) not meeting the requirements of paragraph (f) must be combined with the one or more contiguous lots so they equal one or more conforming lots as much as possible.

(h) Notwithstanding paragraph (f), contiguous nonconforming lots of record in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of section 115.55 and Minnesota Rules, chapter 7080, or connected to a public sewer.

(i) In evaluating all variances, zoning and building permit applications, or conditional use requests, the zoning authority shall require the property owner to address, when appropriate, storm water runoff management, reducing impervious surfaces, increasing setback, restoration of wetlands, vegetative buffers, sewage treatment and water supply capabilities, and other conservation-designed actions.

(j) A portion of a conforming lot may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot size and sewage treatment requirements of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.

Subd. 1f. Substandard structures. Notwithstanding subdivision 1e, Minnesota Rules, parts 6105.0351 to 6105.0550, may allow for the continuation and improvement of substandard structures, as defined in Minnesota Rules, part 6105.0354, subpart 30, in the Lower Saint Croix National Scenic Riverway.

Subd. 1g. Feedlot zoning controls. (a) A municipality proposing to adopt a new feedlot zoning control or to amend an existing feedlot zoning control must notify the Pollution Control Agency and commissioner of agriculture at the beginning of the process, no later than the date notice is given of the first hearing proposing to adopt or amend a zoning control purporting to address feedlots.

(b) Prior to final approval of a feedlot zoning control, the governing body of a municipality may submit a copy of the proposed zoning control to the Pollution Control Agency and to the commissioner of agriculture and request review, comment, and recommendations on the environmental and agricultural effects from specific provisions in the ordinance.

(c) The agencies' response to the municipality may include:

(1) any recommendations for improvements in the ordinance; and

(2) the legal, social, economic, or scientific justification for each recommendation under clause (1).

(d) At the request of the municipality's governing body, the municipality must prepare a report on the economic effects from specific provisions in the ordinance. Economic analysis must state whether the ordinance will affect the local economy and describe the kinds of businesses affected and the projected impact the proposal will have on those businesses. To assist the municipality, the commissioner of agriculture, in cooperation with the Department of Employment and Economic Development, must develop a template for measuring local economic effects and make it available to the municipality. The report must be submitted to the commissioners of employment and economic development and agriculture along with the proposed ordinance.

(e) A local ordinance that contains a setback for new feedlots from existing residences must also provide for a new residence setback from existing feedlots located in areas zoned agricultural at the same distances and conditions specified in the setback for new feedlots, unless the new residence is built to replace an existing residence. A municipality may grant a variance from this requirement under section 462.358, subdivision 6.

Subd. 1h. Comprehensive plans in greater Minnesota; open spaces. When adopting or updating a comprehensive plan in a municipality located within a county that is not a greater than 80 percent area, as defined in section 103G.005, subdivision 10b, and that is located outside the metropolitan area, as defined by section 473.121, subdivision 2, the municipality shall consider adopting goals and objectives for the preservation of agricultural, forest, wildlife, and open space land and the minimization of development in sensitive shoreland areas. Within three years of updating the comprehensive plan, the municipality shall consider adopting ordinances as part of the municipality's official controls that encourage the implementation of the goals and objectives.

Subd. 2. General requirements. (a) At any time after the adoption of a land use plan for the municipality, the planning agency, for the purpose of carrying out the policies and goals of the land use plan, may prepare a proposed zoning ordinance and submit it to the governing body with its recommendations for adoption.

(b) Subject to the requirements of subdivisions 3, 4, and 5, the governing body may adopt and amend a zoning ordinance by a majority vote of all its members. The adoption or amendment of any portion of a zoning ordinance which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial requires a two-thirds majority vote of all members of the governing body.

(c) The land use plan must provide guidelines for the timing and sequence of the adoption of official controls to ensure planned, orderly, and staged development and redevelopment consistent with the land use plan.

Subd. 3. Public hearings. No zoning ordinance or amendment thereto shall be adopted until a public hearing has been held thereon by the planning agency or by the governing body. A notice of the time, place and purpose of the hearing shall be published in the official newspaper of the municipality at least ten days prior to the day of the hearing. When an amendment involves changes in district boundaries affecting an area of five acres or less, a similar notice shall be mailed at least ten days before the day of the hearing to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the amendment relates. For the purpose of giving mailed notice, the person responsible for mailing the notice may use any appropriate records to determine the names and addresses of owners. A copy of the notice

and a list of the owners and addresses to which the notice was sent shall be attested to by the responsible person and shall be made a part of the records of the proceedings. The failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceedings, provided a bona fide attempt to comply with this subdivision has been made.

Subd. 4. Amendments. An amendment to a zoning ordinance may be initiated by the governing body, the planning agency, or by petition of affected property owners as defined in the zoning ordinance. An amendment not initiated by the planning agency shall be referred to the planning agency, if there is one, for study and report and may not be acted upon by the governing body until it has received the recommendation of the planning agency on the proposed amendment or until 60 days have elapsed from the date of reference of the amendment without a report by the planning agency.

Subd. 5. Amendment; certain cities of the first class. The provisions of this subdivision apply to the adoption or amendment of any portion of a zoning ordinance which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial of a property located in a city of the first class, except a city of the first class in which a different process is provided through the operation of the city's home rule charter. In a city to which this subdivision applies, amendments to a zoning ordinance shall be made in conformance with this section but only after there shall have been filed in the office of the city clerk a written consent of the owners of two-thirds of the several descriptions of real estate situate within 100 feet of the total contiguous descriptions of real estate held by the same owner or any party purchasing any such contiguous property within one year preceding the request, and after the affirmative vote in favor thereof by a majority of the members of the governing body of any such city. The governing body of such city may, by a two-thirds vote of its members, after hearing, adopt a new zoning ordinance without such written consent whenever the planning commission or planning board of such city shall have made a survey of the whole area of the city or of an area of not less than 40 acres, within which the new ordinance or the amendments or alterations of the existing ordinance would take effect when adopted, and shall have considered whether the number of descriptions of real estate affected by such changes and alterations renders the obtaining of such written consent impractical, and such planning commission or planning board shall report in writing as to whether in its opinion the proposals of the governing body in any case are reasonably related to the overall needs of the community, to existing land use, or to a plan for future land use, and shall have conducted a public hearing on such proposed ordinance, changes or alterations, of which hearing published notice shall have been given in a daily newspaper of general circulation at least once each week for three successive weeks prior to such hearing, which notice shall state the time, place and purpose of such hearing, and shall have reported to the governing body of the city its findings and recommendations in writing.

Subd. 6. Appeals and adjustments. Appeals to the board of appeals and adjustments may be taken by any affected person upon compliance with any reasonable conditions imposed by the zoning ordinance. The board of appeals and adjustments has the following powers with respect to the zoning ordinance:

(1) To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of the zoning ordinance.

(2) To hear requests for variances from the requirements of the zoning ordinance including restrictions placed on nonconformities. Variances shall only be permitted when they are in

harmony with the general purposes and intent of the ordinance and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the ordinance. The board of appeals and adjustments or the governing body as the case may be, may not permit as a variance any use that is not allowed under the zoning ordinance for property in the zone where the affected person's land is located. The board or governing body as the case may be, may permit as a variance the temporary use of a one family dwelling as a two family dwelling. The board or governing body as the case may be may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

Subd. 6a. Normal residential surroundings for persons with disabilities. It is the policy of this state that persons with disabilities should not be excluded by municipal zoning ordinances or other land use regulations from the benefits of normal residential surroundings. For purposes of subdivisions 6a through 9, "person" has the meaning given in section 245A.02, subdivision 11.

Subd. 7. Permitted single family use. A state licensed residential facility or a housing with services establishment registered under chapter 144D serving six or fewer persons, a licensed day care facility serving 12 or fewer persons, and a group family day care facility licensed under Minnesota Rules, parts 9502.0315 to 9502.0445 to serve 14 or fewer children shall be considered a permitted single family residential use of property for the purposes of zoning, except that a residential facility whose primary purpose is to treat juveniles who have violated criminal statutes relating to sex offenses or have been adjudicated delinquent on the basis of conduct in violation of criminal statutes relating to sex offenses shall not be considered a permitted use.

Subd. 8. Permitted multifamily use. Except as otherwise provided in subdivision 7 or in any town, municipal or county zoning regulation as authorized by this subdivision, a state licensed residential facility serving from 7 through 16 persons or a licensed day care facility serving from 13 through 16 persons shall be considered a permitted multifamily residential use of property for purposes of zoning. A township, municipal or county zoning authority may require a conditional use or special use permit in order to assure proper maintenance and operation of a facility, provided that no conditions shall be imposed on the facility which are more restrictive than those imposed on other conditional uses or special uses of residential property in the same zones, unless the additional conditions are necessary to protect the health and safety of the residents of the residential facility. Nothing herein shall be construed to exclude or prohibit residential or day care facilities from single family zones if otherwise permitted by a local zoning regulation.

Subd. 9. Development goals and objectives. In adopting official controls after July 1, 2008, in a municipality outside the metropolitan area, as defined by section 473.121, subdivision 2, the municipality shall consider restricting new residential, commercial, and industrial development so that the new development takes place in areas subject to the following goals and objectives:

- (1) minimizing the fragmentation and development of agricultural, forest, wildlife, and open space lands, including consideration of appropriate minimum lot sizes;
- (2) minimizing further development in sensitive shoreland areas;
- (3) minimizing development near wildlife management areas, scientific and natural areas, and nature centers;
- (4) identification of areas of preference for higher density, including consideration of existing and necessary water and wastewater services, infrastructure, other services, and to the extent feasible, encouraging full development of areas previously zoned for nonagricultural uses;
- (5) encouraging development close to places of employment, shopping centers, schools, mass transit, and other public and private service centers;
- (6) identification of areas where other developments are appropriate; and
- (7) other goals and objectives a municipality may identify.

History: 1965 c 670 s 7; 1969 c 259 s 1; 1973 c 123 art 5 s 7; 1973 c 379 s 4; 1973 c 539 s 1; 1973 c 559 s 1,2; 1975 c 60 s 2; 1978 c 786 s 14,15; Ex1979 c 2 s 42,43; 1981 c 356 s 248; 1982 c 490 s 2; 1982 c 507 s 22; 1984 c 617 s 6-8; 1985 c 62 s 3; 1985 c 194 s 23; 1986 c 444; 1987 c 333 s 22; 1989 c 82 s 2; 1990 c 391 art 8 s 47; 1990 c 568 art 2 s 66,67; 1994 c 473 s 3; 1995 c 224 s 95; 1997 c 113 s 20; 1997 c 200 art 4 s 5; 1997 c 202 art 4 s 11; 1997 c 216 s 138; 1999 c 96 s 3,4; 1999 c 211 s 1; 2001 c 174 s 1; 2001 c 207 s 13,14; 2002 c 366 s 6; 2004 c 258 s 2; 2005 c 56 s 1; 1Sp2005 c 1 art 1 s 92; art 2 s 146; 2007 c 140 art 12 s 14; 2008 c 297 art 1 s 60,61; 2009 c 149 s 3; 2011 c 19 s 2 .

04/30/91 COUNTY ISANTI v. MARY ANN PETERSON

[1] COURT OF APPEALS OF MINNESOTA

[2] No. C0-90-2588

[3] 1991.MN.207 <<http://www.versuslaw.com>>, 469 N.W.2d 467

[4] April 30, 1991

[5] **COUNTY OF ISANTI, RESPONDENT,**
v.
MARY ANN PETERSON, ET AL., APPELLANTS

[6] Appeal from District Court, Isanti County; Hon. Robert Danforth, Judge.

[7] John G. Westrick, St. Paul, Minnesota; Peter I. Orlins, Richfield, Minnesota, for appellant.

[8] Scott A. Hersey, Isanti County Attorney, William J. Robyt, Assistant County Attorney, Cambridge, Minnesota, for respondent.

[9] Edward J. Parker, Presiding Judge. Norton, and Davies, Judges.

[10] The opinion of the court was delivered by: Parker

[11] 1. Minn. Stat. 394.36 (1990) empowers counties to terminate nonconforming uses after a one-year period of discontinuance. Abandonment need not be proved.

[12] 2. The passage of a period of discontinuance specified in a local ordinance for the termination of a nonconforming use constitutes prima facie evidence of intent to abandon the nonconforming use.

[13] Appellants challenge a judgment directing them to conform the use of property to the Isanti County zoning ordinance. They argue the trial court erred by placing the burden of proof on them and by applying the wrong legal standard for discontinuance of a nonconforming use. We affirm.

[14] FACTS

[15] Appellants Mary Ann Peterson and Thomas Date purchased two adjacent parcels of land in Isanti County in 1979. Mary Ann Peterson and her husband, Dale Peterson, own Dale Movers, Inc., a company in the business of selling and transporting houses and other structures. Dale Moyers stored houses on the land prior to 1972, when Isanti County enacted its zoning ordinance. Storage of houses is not a permitted use under the ordinance.

[16] In November 1986 the county filed this action seeking an order compelling appellants to cease storing houses on the property. At trial appellants argued they had a vested right to continue this use as a valid nonconforming use which existed before passage of the zoning ordinance.

[17] Two neighbors and the owner of a nearby garden center testified that no structures were stored on the land from the early 1970's until approximately 1983, when several barn-like sheds were placed on the land. However, appellants' witnesses testified that it has been continuously used for storing houses and

other structures since 1972.

- [18] The garden center owner testified that his family grew corn on the land from 1968 to 1974. The two neighbors remembered corn growing on the property.
- [19] During the bench trial, the judge initially stated that appellants bore the burden of proving continuity. At the close of evidence, however, he stated he was not certain who bore the burden of proof.
- [20] The trial court concluded the nonconforming use had been legally discontinued because no structures were stored on the property from approximately 1972 to 1983; he also concluded the use was abandoned. By memorandum, he explained his analysis of the burden-of-proof problem: discontinuation of the nonconforming use constituted prima facie evidence of intent to abandon, which appellants failed to rebut. The trial court ordered appellants to cease storing houses on the property.
- [21] Appellants failed to move for a new trial. On appeal they allege the trial court erred by determining that discontinuance of the nonconforming use created a rebuttable presumption of intent to abandon the nonconforming use, and by placing on them the burden of proving that the nonconforming use was continuous.

[22] ISSUES

- [23] 1. Does discontinuance for longer than one year terminate the right to a nonconforming use?
- [24] 2. Does non-use for longer than one year create a rebuttable presumption of intent to abandon a nonconforming use?

[25] ARGUMENT(S)

- [26] Because appellant has failed to move for a new trial, the only questions for review are whether the evidence sustains the findings of fact and whether the findings sustain the conclusions of law and the judgment. *Gruenhagen v. Larson*, 310 Minn. 454, 458, 246 N.W.2d 565, 569 (1976). Nevertheless, questions of law may be considered despite the absence of a motion for a new trial. *Schmidt v. St. Paul Fire & Marine Ins. Co.*, 376 N.W.2d 237, 239 (Minn. App. 1985). Interpretation of a zoning ordinance is a question of law, reviewed independently on appeal. *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 608 (Minn. 1980).

[27] I

- [28] Appellants argue that a nonconforming use may be terminated by abandonment, but not by mere discontinuance.
- [29] Minn. Stat. §394.36, subd. 1 (1990), provides that a nonconformity is terminated if it is "discontinued for a period of more than one year." The statute empowers boards of county commissioners to adopt ordinances "requiring non-conformities to conform with the official controls of the county." Minn. Stat. §394.36, subd. 2 (1990).
- [30] The Isanti County Zoning Ordinance provides:
- [31] In the event that a non-conforming use of any building or premises is discontinued or its normal operation stopped for a period of one (1) year, the use of the same shall thereafter conform to the regulation of the district in which it is located.

[32] Isanti County Zoning Ordinance §16, subd. 5(1) (1982).

[33] The fundamental aim of an appellate court construing a statute is to ascertain and give effect to the legislative intent. *County of Hennepin v. City of Hopkins*, 239 Minn. 357, 362, 58 N.W.2d 851, 854 (1953).

[34] *In re Copeland*, 455 N.W.2d 503, 506 (Minn. App. 1990), pet. for rev. denied (Minn. July 31, 1990). "No room for judicial construction exists when the statute speaks for itself." *Commissioner of Revenue v. Richardson*, 302 N.W.2d 23, 26 (Minn. 1981).

[35] Municipal ordinances are drafted in terms of "discontinuance," rather than "abandonment," to avoid the necessity of proving intent to abandon a nonconforming use. 8A E. McQuillin, *The Law of Municipal Corporations* §25.193 (3d ed. 1986); Annotation, *Zoning: Right to Resume Nonconforming Use of Premises after Voluntary or Unexplained Break in the Continuity of Nonconforming Use*, 57 A.L.R.3d 279, §3 (1974).

[36] The courts of most states interpret "discontinuance" to mean "abandonment" in this context. *Id.*; 1 Anderson, *American Law of Zoning* §6.68 (3d ed. 1986). However, a "growing minority" of state courts apply discontinuance provisions according to their plain meaning. *Hartley v. City of Colorado Springs*, 764 P.2d 1216, 1224-25 (Colo. 1988); see *Essex Leasing v. Zoning Bd. of Appeals*, 206 Conn. 595, 539 A.2d 101 (1988) (where separate termination provisions existed for "cessation" and "abandonment"); *Bartlett v. Board of Appeals*, 23 Mass. App. Ct. 664, 505 N.E.2d 193 (1987) (enabling statute allowed termination of nonconforming uses "abandoned or not used" for two years); *Town of Brighton v. Griffin*, 148 Vt. 264, 532 A.2d 1292 (1987).

[37] Both Minn. Stat. §394.36 and section 16 of the Isanti County Zoning Ordinance clearly state that discontinuation of a nonconforming use for one year results in termination of that use. This court cannot amend these unambiguous provisions by placing upon counties the burden of having to prove that a landowner intended to abandon a discontinued nonconforming use.

[38] Contrary to appellants' position, our case law does not require proof of abandonment. See *Hooper v. City of St. Paul*, 353 N.W.2d 138, 140 (Minn. 1984) (nonconforming uses may continue until removed or otherwise discontinued). The trial court properly concluded that appellants' right to continue the nonconforming use was terminated by reason of its discontinuance.

[39] II

[40] The trial court also concluded that appellants abandoned the nonconforming use. Following *City of Minot v. Fisher*, 212 N.W.2d 837 (N.D. 1973), the trial court determined that appellants' discontinuance of the nonconforming use created a presumption of intent to abandon which appellants failed to rebut. Appellants argue that the trial court erred in recognizing a presumption of intent to abandon. We disagree.

[41] Abandonment ordinarily entails two factors: (1) intent to abandon; and (2) an overt act or failure to act indicating the owner no longer claims a right to the nonconforming use. 8A McQuillin at §25.192.

[42] In *City of Minot* a mortuary's nonconforming use was discontinued for longer than the applicable one-year termination ordinance because of flood and an inability to find a new tenant. The North Dakota Supreme Court determined that a presumption of intent to abandon arises upon expiration of the applicable termination period unless cessation of the use is beyond the control of the property owner. *City of Minot*, 212 N.W.2d at 841. The court held that the nonconforming use could continue because cessation was beyond the control of the mortuary. *Id.*

[43] The requirement of intent to abandon is the most imposing obstruction to municipal attempts to terminate nonconforming uses which have been dormant for a period of time.

[44] 1 Anderson, ¶6.68. Where a nonconforming use has been dormant for longer than one year, a presumption of intent to abandon is proper. It ameliorates the municipality's severe burden of having to prove affirmatively its opponent's intent. The landowner is free to present evidence that he intended to continue the use or that cessation was beyond his control. Other states have adopted this rule. See *Martin v. Beehan*, 689 S.W.2d 29 (Ky. App. 1985); *Williams v. Salem Township*, 92 Pa. Cmwlth. 634, 500 A.2d 933(1985), app. den. (Pa. Aug. 24, (1987).

[45] The trial court determined that appellants failed to present any credible evidence that they intended to continue the use or that its cessation was beyond their control. He found agricultural use of the land to be an overt act demonstrating abandonment of the nonconforming use. The trial court concluded the use was abandoned. This conclusion is supported by the evidence and by the trial court's findings.

[46] Appellants argue that the trial court impermissibly placed the burden of proof on them. This argument mischaracterizes a preliminary discussion by the trial court. The trial court's memorandum demonstrates that appellants were not inappropriately burdened.

[47] DECISION

[48] The trial court correctly determined that appellants forfeited the right of nonconforming use by discontinuing it for longer than one year.

[49] Affirmed.

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PETITION OF PROPERTY OWNERS REGARDING
PROPERTY USE AND ZONING AT 890 and 892 GOODRICH AVE.
SAINT PAUL

We the undersigned, owners of property in the vicinity of 890 and 892 Goodrich Ave. Saint Paul are concerned about proposed development and property zoning at that residence. We are requesting that the Summit Hill Association Dist 16 ZLU Committee, Saint Paul Planning Commission Zoning Committee, The Saint Paul Planning Commission and The Saint Paul Department of Planning and Economic Development, decline the application to expand a legal non-conforming use by Providence Development for 890-892 Goodrich Ave.:

Reasons for our opposition to the application include:

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The property reverted back to a conforming use and that the prior non-conforming use to utilize the property as 3-4 units was abandoned through non-use. The property had been occupied for the past 27 years solely by the prior owner and not been utilized as a 3-4 unit dwelling during that period. We request that you do not re-establish a non-conforming use of 3-4 units for this property.

Property Owner's Name:

Barbara Byers

Current Address:

883 Fairmount Av.

City, State, ZIP

St. Paul MN 55105

Property Address (if you are a non-resident property owner)

Property Owner's
Signature

x Barbara Byers

Date:

06/18/12

NOTE. SEE ADDITIONAL
LETTER EMAILED TO
SUMMIT HILL OFFICE.

PETITION OF PROPERTY OWNERS REGARDING
PROPERTY USE AND ZONING AT 890 and 892 GOODRICH AVE.
SAINT PAUL

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Property Owner's Name:

Brennan McNally

Current Address:

889 Fairmount Ave

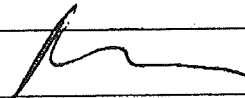
City, State, ZIP

St Paul, MN 55105

Property Address (if you are a non-resident property owner)

Property Owner's
Signature

X



Date:

6, 18, 2012

PETITION OF PROPERTY OWNERS REGARDING
PROPERTY USE AND ZONING AT 890 and 892 GOODRICH AVE.
SAINT PAUL

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Property Owner's Name: Ant D. Mann

Current Address: 880 Goodrich Ave

City, State, ZIP St. Paul 55105

Property Address (if you are a non-resident property owner)

X Helen P. Rogers

Property Owner's Signature X Ant D. Mann

Date: 04/19/2012

PETITION OF PROPERTY OWNERS REGARDING
PROPERTY USE AND ZONING AT 890 and 892 GOODRICH AVE
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Property Owners Name

Constance Miles

Current Address

911 Goodrich Ave

City, State, ZIP

S. Paul Min 55105

(Property Address if you are a non-resident property owner)

Property Owner's
Signature

x

Constance Miles

Date

6.19.12

goodrich addition

From: **conniemiles@comcast.net**

Sent: Tue 6/19/12 11:30 AM

To: gregcruz@msn.com

Hi Greg

I fully agree with the stopping of this property 890 goodrich. The group home next to me causes many problems that people probably are not aware of. The city never had hearings about the home going in I am glad to see that some things have changed. I too am annoyed with people making money off of our once quiet block. I pay for parking out front but the group home and apartments across the street park there. I wrote a note to the City Council planning about my concerns. Perhaps there is some rule about group occupancy on the block with the group facility on the block. I would like to see the city make more of an effort to oversee all of this. This is supposed to be a residential block. Thanks for all of your efforts if I can be of assistance let me know.

PETITION OF PROPERTY OWNERS REGARDING
PROPERTY USE AND ZONING AT 890 and 892 GOODRICH AVE.
SAINT PAUL

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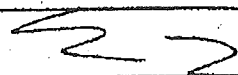
Property Owner's Name: William C. Moyers

Current Address: 873 Fairmont Ave

City, State, ZIP Saint Paul MN 55105

Property Address (if you are a non-resident property owner)

Property Owner's
Signature

X 

Date:

06/18/12

Post-It® Fax Note	7671	Date	6/19/12	# of pages	1
To	Greg Cruz	From	William Moyers		
Co./Dept.		Co.			
Phone #		Phone #	651-303-2383		
Fax #	651-690-2323	Fax #			

PETITION OF PROPERTY OWNERS REGARDING
PROPERTY USE AND ZONING AT 890 and 892 GOODRICH AVE.
SAINT PAUL

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Property Owner's Name: _____

Current Address: _____

City, State, ZIP _____

Property Address (if you are a non-resident property owner) _____

Property Owner's
Signature

X _____

Date: _____

PETITION OF PROPERTY OWNERS REGARDING
PROPERTY USE AND ZONING AT 890 and 892 GOODRICH AVE.
SAINT PAUL

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Property Owner's Name: LISA MCGANN & GREGORY CHWZ

Current Address: 872 GOODRICH AVE.

City, State, ZIP SAINT PAUL, MN 55105

Property Address (if you are a non-resident property owner)

Property Owner's
Signature

X Lisa McGann Gregory Chwz

Date:

06/17/2012

PETITION OF PROPERTY OWNERS REGARDING
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Property Owner's Name: SHERMAN SOKOL

Current Address: 891 GOODRICH AVE.

City, State, ZIP ST. PAUL, MN 55105

Property Address (if you are a non-resident property owner)

Property Owner's
Signature

X. Sherman Sokol

Date: 06 / 17 / 2012

I, SHERMAN SOREL HAVE RESIDED AT 571
GOODRICH AVE., ST. PAUL FOR 50 YEARS.

I HAVE WITNESSED MILLIE STONE AS THE
ONLY RESIDENT AT THE PROPERTY IN THE
LAST 25 YEARS, (SIC 572 GOODRICH)
ACROSS THE STREET.

Sherman Sorel

JUNE 16, 2012

PETITION OF PROPERTY OWNERS REGARDING
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SAINT PAUL

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Property Owner's Name:

JAN LEEPER

Current Address:

890 Goodrich Ave.

City, State, ZIP

ST. PAUL, MN 55105

Property Address (if you are a non-resident property owner)

Property Owner's
Signature

X [Signature]

Date:

6/18/2018

PETITION OF PROPERTY OWNERS REGARDING
PROPERTY USE AND ZONING AT 890 and 892 GOODRICH AVE.
SAINT PAUL

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Property Owner's Name:

Clyde Edward Doepner

Current Address:

866 Goodrich Avenue

City, State, ZIP

Saint Paul, MN 55105

Property Address (if you are a non-resident property owner)

Property Owner's
Signature

x Clyde Doepner

Date:

06 / 18 / 12

June 18, 2012

Clyde and Jan Deepener
866 Goodrich Ave.
St. Paul, MN 55105

RE: Proposed to changes at 890 – 892 Goodrich Ave.

We have lived at 866 Goodrich for 35 years. It is a well-established neighborhood with over 80 % of the neighbors having resided here as long as we have.

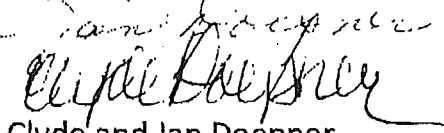
We feel the proposed change to the property at 890/892 Goodrich Avenue would be detrimental to the neighborhood and even lower our property values. We strongly agree with the facts and concerns listed in the petition that we have signed.

Sharing the same alley as Millie, who previously resided at this property, we know she was the only resident at that address for the past 25 years. It has been "alley humor" to note that the other 3 stalls in her garage were full of boxes to the rafters.

We daily walk the neighborhood and have comment about the ambience of our block. To add multiple vehicles in front of this residence, by adding apartments, would drastically affect the quality and character of our neighborhood.

We hoped Millie would have upgraded the appearance of her house, but never did we desire to have the house sold and turned into an apartment complex. The transition of people coming and going would totally change the charming character and safety of the neighborhood we have enjoyed for so many years.

Sincerely,


Clyde and Jan Deepner

PETITION OF PROPERTY OWNERS REGARDING
PROPERTY USE AND ZONING AT 890 and 892 GOODRICH AVE.
SAINT PAUL

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Property Owner's Name: JOHN OTTERSON

Current Address: 873 GOODRICH AVE.

City, State, ZIP ST. PAUL, MN. 55105

Property Address (if you are a non-resident property owner)

Property Owner's X Signature

Date: 6/18/12

PETITION OF PROPERTY OWNERS REGARDING
PROPERTY USE AND ZONING AT 890 and 892 GOODRICH AVE.
SAINT PAUL

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Property Owner's Name: John + Christine Otterson
Current Address: 873 Goodrich Ave
St. Paul 55105
City, State, ZIP

Property Address (if you are a non-resident property owner)

Property Owner's
Signature

X Christine Otterson

Date:

6.19.12

St. Paul Planning Commission Zoning Committee

Re: 890-892 Goodrich Ave.

Date: June 18, 2012

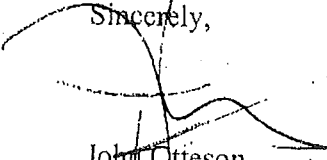
To whom it may concern:

My name is John Otteson and I have lived at 873 Goodrich Ave. since 1980. I am writing to express my concerns regarding the application for an expansion of the zoning variance for 890-892 Goodrich Ave.

1. Parking Concern – Parking has always been a big issue in our neighborhood. So much so, the block joined the Area 9 permit parking area to alleviate some of those challenges. This request to expand into the attic areas will only add to the problem of finding available space to park.
2. Zoning - There's a question whether the property reverted back to its original conforming use because it had been abandoned as a 4-unit. To my recollection, only one unit has been occupied for many years.
3. General Concern – We can all agree that the property needs to be rehabbed. When I first saw the landscaping work done, I was encouraged. Unfortunately, it has never been finished and it looks very unattractive. After talking with the developer, I am convinced he intends to do this project on the cheap. For example, he has no intention of restoring the exterior, other than just painting over the old asbestos siding.

This is an historic neighborhood and the neighbors have worked hard to maintain and preserve the character. Can't we expect the same thing from this developer?

Sincerely,



John Otteson
873 Goodrich Ave. St. Paul
C: 651-261-5807

PETITION OF PROPERTY OWNERS REGARDING
PROPERTY USE AND ZONING AT 890 and 892 GOODRICH AVE.
SAINT PAUL

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Property Owner's Name: Gordon & Mary Peters

Current Address: 891 Fairmount Ave.

City, State, ZIP: St. Paul, MN 55105

Property Address (if you are a non-resident property owner)

Property Owner's
Signature

x Gordon Peters Mary Peters

Date: 06/18/2012

To: Interested Parties

From: Mary Peters

Re: 890-892 Goodrich Ave. Renovation

Date: 06/16/2012

My name is Mary Peters. My address is 897 Fairmount Ave., St. Paul, MN 55105. This is located directly across the alley from 890-892 Goodrich Ave. I have lived at this address since June, 1963. My husband, Gordy, has lived at this address since May, 1978. When we moved here in 1963, the William Stone family was living at 890-892 Goodrich Ave. together with their 3 children. Mildred was his wife, and their sons were named Mark and Chuck, their daughter was named Carlene. They were utilizing the property as a duplex and lived on the west side of the duplex at 892 Goodrich Ave. At some point William Stone's mother moved into the east side of the duplex, at 890 Goodrich Ave. The boys grew up and moved away, and when Carlene was a teenager, William Stone moved out. Mildred and Carlene continued to live at 892 Goodrich, and at some point Carlene moved out as she grew older. Mildred and her mother-in-law continued to reside at 890-892 Goodrich, until the mother-in-law's death. Since then Mildred lived alone on the west side of the property at 892 Goodrich until November, 2011. She had placed the property for sale, and closed on it just before Thanksgiving, 2011. She now lives with her daughter Carlene's family.

This property has continually been used as a duplex since I have lived here in 1963 and most likely previous to 1963. It was never used as a four-plex.

Mary Peters 6-16-12

Mary Peters 06/16/2012

Gordy Peters 6-16-12

Gordy Peters 06/16/2012

To: Interested Parties

2ND / ADDITIONAL
STATEMENT

From: Mary Peters

Re: 890-892 Goodrich Ave. Renovation

Date: 06/16/2012

My name is Mary Peters. My husband, Gordy and I live at 897 Fairmount Ave., St. Paul, MN 55105. This is located directly across the alley from 890-892 Goodrich Ave. We have been unhappy with the contractor who is renovating 890-892 Goodrich, Providence Development LLC. He has had several complaints regarding the renovation, including the retaining wall in the front of the property and construction debris in the back yard and garage of the property. Complaints were made about the city sidewalk being unusable during the construction of the retaining wall and the sand and mud that covered the sidewalk during and after the construction. The next door neighbor to the west of the property, John Christiansen, complained to me and the contractor that part of the retaining wall was placed on his property. There is a record on file with the City of St. Paul, (Permit Online) about the construction debris in the back yard. The contractor then obtained a dumpster and placed it on the driveway behind 890-892 Goodrich, with part of the dumpster obstructing the alley way. There is a record on file with the City of St. Paul that there was no permit for the dumpster. The dumpster was over filled and was too heavy to be hauled away, so the workers had to shovel part of the debris back into the driveway, which spilled into the alley. Dumpster divers came and went daily, and others deposited their own debris in the dumpster on a daily basis. This went on at all hours of the day and night. I had to continually shovel the alley with a snow shovel to clear the debris created by the dumpster divers and dumpster depositors so that it did not puncture the tires on our vehicles. I finally called the city in frustration, as the dumpster was there for over one month and there was zero construction activity. No workers were to be seen. It was finally hauled away.

My next door neighbor, Sik-Toh Ting, complained to me about the way he was treated by the contractor during a conversation about the renovation. The contractor was trying to convince Sik-Toh to sign his petition to enlarge the upper two units of the nonconforming four-plex. Sik-Toh said he was treated very disrespectfully by the contractor. My neighbor who lives next door to 890-892 Goodrich, John Christiansen, complained to me that the contractor came to his house four different times to convince him to sign the petition, which he eventually did.

Mary Peters 6-16-12

Mary Peters

06/16/2012

Gordon Peters 6-16-12

Gordon Peters

06/16/2012

PETITION OF PROPERTY OWNERS REGARDING
PROPERTY USE AND ZONING AT 890 and 892 GOODRICH AVE.
SAINT PAUL

We the undersigned, owners of property in the vicinity of 890 and 892 Goodrich Ave. Saint Paul are concerned about proposed development and property zoning at that residence. In light of new and additional information we feel we can make a more informed decision and we are requesting that the Summit Hill Association Dist 16 ZLU Committee, Saint Paul Planning Commission Zoning Committee, The Saint Paul Planning Commission and The Saint Paul Department of Planning and Economic Development, decline the application to expand a legal non-conforming use by Providence Development for 890-892 Goodrich Ave.:

Reasons for our opposition to the application include:

Parking will have adverse effects in the immediate vicinity and the entire block. The block joined the Area 9 permit parking area to aid in the protection and safety of children and pedestrians by reducing hazardous traffic conditions, and to help lessen noise and pollution, and to preserve the character of Goodrich Ave. as a residential district. Even though the developer has indicated four off-street parking spots, it is likely that on-street parking will add additional residential autos plus additional visitor parking to Goodrich Ave.

The property reverted back to a conforming use and that the prior non-conforming use to utilize the property as 3-4 units was abandoned through non-use. The property had been occupied for the past 27 years solely by the prior owner and not been utilized as a 3-4 unit dwelling during that period. We request that you do not re-establish a non-conforming use of 3-4 units for this property.

Property Owner's Name: STEVEN P. LARSON

Current Address: 887 Goodrich Ave

City, State, ZIP St. Paul, MN 55105

Property Address (if you are a non-resident property owner)

Property Owner's
Signature

X 

Date: 6/18/12

John, here is the letter I sent to the planning commission.

----- Forwarded Message -----

From: Steve Larson <larson158@yahoo.com>

To: "Paul.dubruiel@ci.stpaul.mn.us" <Paul.dubruiel@ci.stpaul.mn.us>

Sent: Friday, June 15, 2012 11:02 AM

Subject: 890-892 Zoning variance public hearing

Dear Sirs,

My name is Steve Larson and I am writing to express my observations and concerns regarding the application for an expansion of the zoning variance at 890/892 Goodrich Ave. I own and live in the duplex directly across the street at 889 Goodrich Ave.

First, I would like to say that even though I did sign the petition to allow Mr. Hjelle to be heard in front of the planning commission, it was with some reservation that I signed. Though this property has been an eye sore on our block for many years and to see it improved would be very much welcomed, I do not want to see it done without regard for keeping the quality and standards that make our neighborhood a very unique and desirable place to live.

I did get a chance to walk through the property with Mr. Hjelle. I commend him on the improvements to the water, gas, electric, heating & air conditioning.

During our walk through, I noticed that one of the stairwells leading to the attic space where the bedrooms are being framed in was quite awkward in both height and width. I think this will become an issue when the framing inspection takes place and leads me to believe that there wasn't a lot of thought that went into making these extra bedrooms. Also, once in the attic area, there were in fact two more rooms framed in each space. Though this was described as an additional bedroom and a den, a room with a closet is in fact a bedroom and would most likely be used as such. This would of course lead to even more parking pressure on our street than is indicated in the requested variance expansion.

In addition, I was concerned that during our walk through there was talk of not insulating the exterior walls, even though many of them were exposed down to the lathe and 2"x 4" framing. I assume things like this are addressed during an inspection and that there is some requirement to insulate an exterior wall once it is exposed. But even if it's not required, that is the time to have it done. Could this be some indication of potential corner cutting in other areas? This concerns me because if the quality is not there, the quality of the renter will not be there.

In the letter from Mr. Hjelle requesting signatures for the variance petition, there is talk of stainless steel appliances and granite countertops. That can sound appealing but I felt like I was on an episode of "Flip this house." What good are stainless steel and granite if the exterior walls are not insulated and you have to duck your head to get to an upstairs bedroom? This may get a renter in but will not keep them long term and the turnover is not good for the neighborhood.

Also in his letter were intentions about the type of renter, how the building will be managed and whether there will be subsidized housing. Those are great intentions, unfortunately there is no guarantee they will not change in the future.

I would prefer not to have any more bedrooms framed in and to use that attic space as a family/entertainment room or maybe as one big bedroom at most. I understand the desire to generate as much income from a property as possible, I just want the scope of the project to be within the bounds of the variance and for the work to be completed in a quality manner. I do not want to see a bunch of bedrooms squeezed into an already stressed space in the hopes of maximizing income from more but potentially less desirable tenants. I think if the quality of construction and design are not there, the quality of renter will not be there and that is not something I want for our block.

Steven P. Larson

LINDA A TING/SIK-TON TING
891 FAIRMOUNT AVE
ST. PAUL, MN 55105

Linda A. Ting *Sik-ton ting*
6 18 2012

To Whom It May Concern

Subject: The use of the House at
890/892 Goodrich Ave, St. Paul,
1979-2011

We are Linda and Sik-Toh Tung. For thirty-three years (1979-present) we live at 891 Fairmount Ave. across the alley (on the South side) from 890/892 Goodrich Ave.

When we moved into 891 Fairmount Ave in 1979, Mr. and Mrs. Stone lived at 890/892 Goodrich Ave. with their three children. Sometime later, we heard about Mr. Stone's mother, whom we did not meet, living at the same address. Since then Mr. Stone's mother passed away, the children and Mr. Stone moved out.

Our recollection is that with the departure of her youngest child in the mid-1980's, Mrs. Stone lived alone in 890/892 Goodrich Ave. for 20-plus years up to the time she sold the property in November 2011.

Signed: Linda A. Tung 6-17-2012
: Sik-Toh Tung 6/17/2012.

PETITION OF PROPERTY OWNERS REGARDING
PROPERTY USE AND ZONING AT 890 and 892 GOODRICH AVE.
SAINT PAUL

We the undersigned, owners of property in the vicinity of 890 and 892 Goodrich Ave. Saint Paul are concerned about proposed development and property zoning at that residence. In light of new and additional information we feel we can make a more informed decision and we are requesting that the Summit Hill Association Dist 16 ZLU Committee, Saint Paul Planning Commission Zoning Committee, The Saint Paul Planning Commission and The Saint Paul Department of Planning and Economic Development, decline the application to expand a legal non-conforming use by Providence Development for 890-892 Goodrich Ave.:

Reasons for our opposition to the application include:

Parking will have adverse effects in the immediate vicinity and the entire block. The block joined the Area 9 permit parking area to aid in the protection and safety of children and pedestrians by reducing hazardous traffic conditions, and to help lessen noise and pollution, and to preserve the character of Goodrich Ave. as a residential district. Even though the developer has indicated four off-street parking spots, it is likely that on-street parking will add additional residential autos plus additional visitor parking to Goodrich Ave.

The property reverted back to a conforming use and that the prior non-conforming use to utilize the property as 3-4 units was abandoned through non-use. The property had been occupied for the past 27 years solely by the prior owner and not been utilized as a 3-4 unit dwelling during that period. We request that you do not re-establish a non-conforming use of 3-4 units for this property.

Property Owner's Name: DAVID SCHULTZ + TAMI TAYSLA

Current Address: 885 GOODRICH AVE

City, State, ZIP ST. PAUL, MN 55105

Property Address (if you are a non-resident property owner)

Property Owner's Signature X SEE ATTACHED EMAIL AUTHORIZATION

Date: 06/19/12

Tonight's hearing

From: **David Schultz** (David.Schultz@maslon.com)
Sent: Tue 6/19/12 4:55 PM
To: gregcruz@msn.com
Cc: ttrysla1@Fairview.org
1 attachment
vcard.vcf (0.5 KB)

Greg - you can use this email as my and Trudi's signature on the petition you have circulated.

David Schultz
Direct: 612.672-8399
Fax: 612.642.8399
Maslon Edelman Borman & Brand, LLP
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4140

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PETITION OF PROPERTY OWNERS REGARDING
PROPERTY USE AND ZONING AT 890 and 892 GOODRICH AVE.
SAINT PAUL

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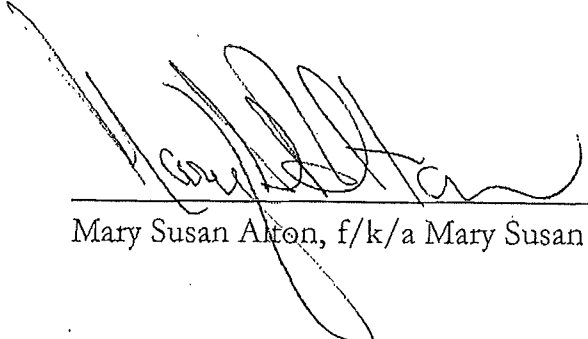
Property Owner's Name: John D. Mogol
Current Address: 909 Goodrich Ave
City, State, ZIP St. Paul, MN 55105

Property Address (if you are a non-resident property owner)

N/A
Property Owner's Signature x John D. Mogol
Date: 6/19/2012

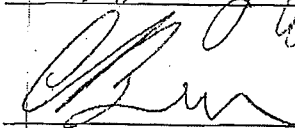
Sworn Statement of MARY SUSAN ALTON

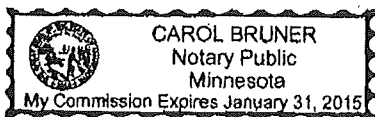
1. I am the owner and occupant of residential property at 908 Goodrich Avenue in St. Paul, Minnesota.
2. I purchased this property in 1978 and have lived there continuously since then.
3. At the time of the purchase, my name was Mary Susan Schneider.
4. In 1982, I changed my surname to Alton.
5. It was recently pointed out to me that on Ramsey County property records, Mary Susan Schneider is listed as the record owner of 908 Goodrich Avenue.
6. Mary Susan Schneider and Mary Susan Alton are the same person.


Mary Susan Alton, f/k/a Mary Susan Schneider

Subscribed and sworn before me on

This 20th day of June 2012


Notary Public



Transportation Committee Staff Report

Committee date: June 18, 2012

Project Name	Comments on the draft Central Corridor Transit Service Concept Plan
Geographic Scope	In St. Paul, Larpentuer Ave on the north, 35E on east (includes downtown), Mississippi River on south and west. Plan also includes downtown Minneapolis south to Lake Street (east of Hiawatha LRT) and north to Hennepin Ave.
Ward(s)	1, 2, 4, 5
District Council(s)	6, 7, 8,9,10, 11,12,13,14,15,16,17
Project Description	In anticipation of CCLRT, Metro Transit is proposing to restructure and enhance bus service to LRT. See the full concept plan (66 pages) at http://metrotransit.org/central-concept-plan.aspx
Project Contact	Scott Thompson, Metro Transit
Contact email/phone	Scott.thompson@metc.state.mn.us , 651-349-7774
Lead Agency/Department	Metro Transit
Purpose of Project/Plan	Make better bus connections to CCLRT. One third of all Metro Transit rides are taken in the study area. 40% of train riders are expected to transfer from buses, making timely connections vital.
Planning References	Comprehensive Plan: Policy T2.6, T2.9, T2.11
Project stage	Planning
General Timeline	June 2012 – Public meetings and public hearings July 9, 2012- Public comment period closes Summer/Fall 2012 – Revise Concept Plan Late 2012 – Final Plan approval 2014 – Implementation with the opening of the Green Line
District Council position (if applicable)	
Level of Committee Involvement	Inform & involve committee
Previous Committee action	None; briefed by Metro Transit in April 2012
Level of Public Involvement	Inform & involve public
Public Hearing	5 opportunities: http://metrotransit.org/Central_meetings.aspx
Public Hearing Location	Various, see link above
Primary Funding Source(s)	
Cost (of planning project)	

Staff recommendation	Approval of City comments
Action item requested of the Committee	Review attached comments and approve
Committee recommendation	Approve
Committee vote	6 - 0

City of Saint Paul
Comments on the draft *Central Corridor Transit Service Concept Plan*

June 18, 2012

The City of Saint Paul applauds Metro Transit on their extensive and inclusive outreach process for the Central Corridor Transit Service Study, and for the thoughtful recommendations that have been put forward in this draft concept plan. The planned local service improvements represent significant user benefits for those who work, live, and visit Saint Paul. Metro Transit's emphasis on reinvesting resources to improve coverage, frequency, and hours of service will enable more efficient transit use in the study area, and the approach is consistent with adopted Comprehensive Plan policy T2.6.

The City is supportive of the concept plan overall, however, there are several topics which warrant additional consideration:

- **Route 83 - Lexington Parkway.** The new route is currently proposed to serve the southern portion of Lexington Parkway, from West 7th Street to Energy Park Drive, and on Energy Park and Snelling Avenue to Como Avenue. The new service on Lexington will provide much-needed service in the two-mile gap between Snelling and Dale, however, areas north of Lexington and Energy Park do not gain bus service under this service plan. While a low bridge clearance at Jessamine challenges regular route bus service on this northern section, it is critical that Como Regional Park and the North End-South Como neighborhood are able to share in the benefits of LRT and proximity to enhanced transit options.

Comprehensive Plan policy PR6.1 calls for designing convenient connections to from major parks to LRT, citing Como Park Zoo and Marjorie McNeely Conservatory as an example. Como Regional Park functions as both a neighborhood park and a regional attraction, serving 4 million visitors a year. Recently the City adopted the *Como Regional Park Transportation Implementation Plan (TIP)*, recognizing the need for a plan to address the park's transportation and parking issues and direct future planning efforts and resources.

In the Como TIP process, transit service - bus routes in or near the park, bus frequency, bus stop locations, and park shuttle service¹ – was identified by both the community and the task force as a top issue. A 2008 survey showed that 85% of visitors to Como come from outside of Saint Paul, making connections to regional transit a vital tool for relieving parking issues and traffic congestion. Increasing transit mode share, improving transit facilities, and reducing the need for new parking have emerged as primary goals of the TIP. The City would like to continue to partner with Metro Transit to further explore options for bus routing, optimized transfers, and potential for capital

¹ In 2009, the City implemented a shuttle service to and from a 450-space parking lot located at the State Fairgrounds along Como Avenue, but the lot is unavailable during fairground events. For 2009, the Como Shuttle operated on weekends only, and offered weekdays since and the maximum single day usage was 2,457 visitors (or 4,914 trips). The average usage is 6.9% of visitors on a busy weekend day. In 2011, Como Park recorded 11 days with more than 1,000 visitors riding the shuttle.

improvements in this area. A copy of the Como TIP can be found at www.stpaul.gov/DocumentView.aspx?DID=19913

- **Route 16.** In the planning of LRT, the City has supported increasing midday service over peak hour service on Route 16 due to the large number of off-peak trips traditionally taken on this local service. However, it is difficult to estimate how many peak or off-peak trips will switch to LRT due to better headways and accessibility advantages. The City recommends that Metro Transit revisit the topic of Route 16 service approximately one year after LRT operations begin, and adjust as needed.
- **Routes 3 and 21.** East/west improvements on Routes 63 and 67, in addition to upgraded Green Line service, will greatly improve crosstown service in the urban core. The City recommends that Metro Transit also consider increasing the frequency of other parallel routes, including the Routes 3 (Como) and 21 (Selby-Lake). With the redirection of the 65, Selby Avenue in particular may merit additional study, as identified in chapters four and six.
- **Local, transit-supportive improvements.** The City recognizes that pedestrian safety will need increasing attention with proposed improvements on routes like Cretin Avenue, where missing sidewalks and higher vehicle speeds make using transit more difficult. As described in chapter seven, trip ends will also need to accommodate transit driver facilities, which will need to be further explored for new and extended routes. Additionally, the City continues to partner with Metro Transit on concurrent transit improvement projects in this study area, including the Snelling Arterial "Rapid Bus" project and the Downtown Saint Paul Bus Stop Improvement Plan.

Again, the City of Saint Paul appreciates Metro Transit's efforts on this comprehensive study, and is excited to see the level of overall transit improvements. We look forward to partnering on the implementation and evaluation of the finalized plan.

CHAPTER FOUR: PROPOSED SERVICE CHANGES

CONCEPT PLAN TRANSIT SERVICE NETWORK

The primary emphasis of the Concept Plan is to reduce service on those bus routes whose trips will now be served by the new rail service and to shift those resources into improved coverage, frequency, and hours of service on bus routes connecting with rail. Improving the frequency of service will improve the reliability of the routes and the transfer connections between routes.

Under this plan, Route 50 is eliminated and service on Route 16 and 94 is reduced. At the same time, frequency is improved on four core local routes on weekdays (Routes 65, 67, 84 and 87), five on Saturdays (Routes 63, 65, 67, 84 and 87) and six routes on Sundays (Routes 62, 63, 65, 67, 84 and 87). Frequencies will be compatible with those of the Green Line during every hour of service to provide reliable and consistent connections to the greatest extent possible. Figure 8 presents a map of the Concept Plan and Figure 9 is a summary of existing and proposed service frequencies by route.

The Central Corridor Transit Service Study Concept Plan includes the following proposed service changes:

University Avenue Corridor (Routes 16, 50, 94)

The Green Line will be the primary east-west service in the corridor, running every ten minutes most of the day, seven days a week. This service will replace the existing Route 50 limited stop bus service.

Local Route 16 will continue to operate parallel to the Green Line, at a reduced frequency, providing local access for those who have difficulty traveling longer distances to a rail station. Route 16 will operate every twenty minutes at most times of the day. For most of the day, Route 16 will only operate between downtown St. Paul and Oak Street on the east end of the University of Minnesota campus. Between approximately 1:00 a.m. and 5:00 a.m., when rail service is not operating, Route 16 will be extended to downtown Minneapolis.

Route 94 currently provides express service on I-94 between downtown Minneapolis and downtown St. Paul. Select trips also serve Snelling Avenue and/or Marion Street and the State Capitol area. After the Green Line begins operations, Route 94 will operate only during weekday peak periods (5:00 a.m.-9:00 a.m. and 3:00 p.m.-7:00 p.m.). The route will operate non-stop between the two downtowns and will no longer stop at Snelling Avenue or serve Marion Street and the Capitol area. Route 94 will continue to serve River Park Plaza across the river from downtown St. Paul.

East-West Connections (Routes 8, 63, 67)

East-west routes that parallel the University Avenue corridor will be adjusted to improve connections with the Green Line.

Route 84 on Snelling Avenue will be improved to operate every 10 minutes between Rosedale and Ford Parkway. South of Ford Parkway, the two local routings (D and H branches) will be combined into one branch serving both Montreal Avenue and the West 7th and Davern Street area every 30 minutes using current routings. Service to 46th Street Station (Blue Line) on Ford Parkway will continue to operate every 30 minutes.

Future Rapid Bus service on Snelling Avenue may operate a limited stop service every 10 minutes with stations every $\frac{1}{4}$ to $\frac{1}{2}$ mile on Snelling Avenue and Ford Parkway between Rosedale and the 46th Street station (Blue Line). If Rapid Bus service exists by the time Green Line operations begin, this service would replace much of Route 84 service on Snelling.

Route 87, which serves Rosedale, Raymond and Cleveland avenues and the U of M's St. Paul campus, will also operate an improved frequency of service. Trips will operate every 20 minutes at most times, including new evening and weekend service. Route 87 will be rerouted across I-94 to allow it to more directly serve the Raymond Avenue Station. Service will operate via Cleveland, Marshall and Cretin avenues to University Avenue instead of Gilbert and Prior avenues.

Limited Stop Commuter Routes (Routes 134, 144)

In addition to all-day local service, Metro Transit currently operates rush-hour only commuter-oriented service on both Snelling and Cleveland/Cretin avenues.

Route 134 provides nearly 650 daily rides between Highland Park and downtown Minneapolis via Cleveland and Cretin avenues and I-94. The span of service on this route will be reduced on the fringe of the rush hours but will remain unchanged for the most popular work start and ends times. A minor reroute using Cleveland and Marshall avenues to Cretin Avenue is proposed to match Route 87 service and serve a more residential area. Reverse commute service on Route 134 will be eliminated. Alternative service will be available via Route 87 and the Green Line.

Route 144 provides about 160 rides a day between Highland Park, the U of M and downtown Minneapolis via Snelling Avenue and I-94. This route will be eliminated, with alternate service available via Route 84 and the Green Line.

No Significant Changes (Routes 2, 3, 6, 21, 53)

No significant changes are proposed for routes 2, 3, 6, 21 or 53. These routes were included in the study because they make connections with Green Line LRT stations outside of downtown Minneapolis or downtown St. Paul. Based on the results of the study, no route structure or major change in frequency or span of service is planned on Routes 2, 3, 21 and 53. There will be a minor route extension on **Route 6** from Oak Street and Washington Avenue to Stadium Village Station, which will provide a more direct connection between the Marcy Holmes neighborhood and the Green Line.

[illegible]

city of saint paul
planning commission resolution
file number _____
date _____

Formal Comment on the draft Central Corridor Transit Service Concept Plan

WHEREAS, Metro Transit, in cooperation with community members and City of Saint Paul staff, has engaged in a service study and developed a draft *Central Corridor Transit Service Concept Plan*; and

WHEREAS, the *Saint Paul Comprehensive Plan* recommends improving coverage, frequency, and hours of transit service to better connect to the Central Corridor (Green Line) service; and

WHEREAS, the planned service improvements represent significant user benefits for those who work, live, and visit Saint Paul; and

WHEREAS, the Transportation Committee has reviewed the concept plan and approved formal comments to be submitted to Metro Transit;

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission approves the comments recommended by the Transportation Committee; and

BE IT FURTHER RESOLVED, that the Planning Commission forwards them to the Mayor and City Council for their consideration; and

BE IT FINALLY RESOLVED, that the City of Saint Paul thanks Metro Transit for their extensive and inclusive outreach process for the *Central Corridor Transit Service Concept Plan*, and for the thoughtful recommendations that have been put forward in this draft concept plan.

moved by _____
seconded by _____
in favor _____
against _____

Transportation Committee Staff Report

Committee date: May 21, 2012

Project Name	Public Process for Transportation Projects (One Year Check-in)
Geographic Scope	Citywide
Ward(s)	All
District Council(s)	All
Project Description	In spring of 2011, the Transportation Committee discussed and approved a public process for different types of Public Works transportation projects. Since that time, Public Works has worked to implement the processes. Staff will provide a verbal update on the status of implementation and staff suggestions for amendments to the public process documents.
Project Contact	Emily Erickson
Contact email/phone	Emily.Erickson@ci.stpaul.mn.us , 651.266.6059
Lead Agency/Department	Public Works
Purpose of Project/Plan	To clarify and standardize Public Work's approach to transportation projects with respect to community involvement and key project steps.
Planning References	Comp Plan, small area plan, or regional systems citations, etc
Project stage	One year check-in
General Timeline	In progress
District Council position (if applicable)	N/A
Level of Committee Involvement	advise & consent, involve, development of project/program
Previous Committee action	Approval of public process documents in spring 2011
Level of Public Involvement	N/A
Public Hearing	N/A
Public Hearing Location	N/A
Primary Funding Source(s)	N/A
Cost	Staff time

Staff recommendation	Approval
Action item requested of the Committee	1) Provide feedback on how current process is working. 2) Advise on changes to process. 3) Recommend approval of updated document.
Committee recommendation	Approval
Committee vote	Unanimous

Level of Committee Involvement

INFORM: Informational briefings	<i>Projects that are in implementation phase; projects from other jurisdictions; policy documents from other agencies/jurisdictions</i>
ADVISE AND CONSENT: Informational briefings with policy discussion, general directives to staff for follow-through	<i>Project and program reviews primarily initiated by staff; or involvement with program development by others</i>
INVOLVE: Discussions to develop directions for projects & programs	<i>Policy involvement from inception through design, inc. policy development; environmental documentation,</i>
DEVELOPMENT OF PROJECT/PROGRAM: <i>Discussion to form process; screening of ideas; development of recommendations; and managing outreach to the community</i>	<i>Committee has primary responsibility for concept development, and/or overseeing participation process, and/or making specific recommendations to Planning Commission, Mayor and/or City Council</i>

city of saint paul
planning commission resolution
file number _____
date _____

**Recommendation on *Saint Paul Public Works Transportation Projects*
Process**

WHEREAS, in March and April of 2011, the Transportation Committee, discussed and approved process documents for transportation projects originating out of the Saint Paul Department of Public Works; and

WHEREAS, the Department of Public Works has worked to implement the discussed processes; and

WHEREAS, on May 21, 2012, the Transportation Committee discussed updated versions of the process documents and then approved them; and

WHEREAS, the Department of Public Works will incorporate the public process documents to their Best Practices documentation and send out a department-wide memo notifying staff;

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission approves these process documents, and encourages the Department of Public Works to uniformly apply what is directed therein.

moved by _____
seconded by _____
in favor _____
against _____

New Step 2011

**Saint Paul Public Works
Transportation Maintenance Projects Process**

New Step 2012

For City-led Saint Paul Public Works transportation maintenance projects, the City commits to engaging in the following public process:

WORK PLAN

Lead: Public Works leadership

Purpose: Draft 5-year vision plan and 2-year action plan for road maintenance projects.

STAFF REPORT

Lead: Public Works project manager

Participant: Mayor's Office, Councilmembers, District Councils, Interested Parties (through Gov Delivery), general public (through website)

Purpose: Ensure stakeholders are aware of project in timely manner

TRANSPORTATION COMMITTEE REVIEW

Lead: Transportation Committee members

Purpose: Receive feedback to ensure that adopted plans and policies are upheld at the project level; flag projects to consider changes from current roadway.

PROJECT WEBPAGES

Lead: Public Works project manager

Participant: Mayor's Office, Councilmembers, District Councils, Interested Parties (through Gov Delivery), general public (through website)

Purpose: Communicate the staff report, public input, additional consideration, and action on Public Works transportation construction projects (update throughout process) to ensure stakeholders are

IF NO CHANGE FROM EXISTING ROAD DESIGN

IF CHANGE FROM EXISTING ROAD DESIGN

PROPERTY OWNER NOTIFICATION

Participant: Impacted Property owners

Purpose: Communicate basic project information

PROPERTY OWNER NOTIFICATION

Participant: Impacted Property owners

Purpose: Communicate basic project information, notify of public meeting

PUBLIC MEETING

Participant: Public

Purpose: Inform, receive input

TRANSPORTATION COMMITTEE ACTION

Lead: Transportation Committee members

Purpose: If the community process would result in a design that is a change in scope, advise whether and

PLANNING COMMISSION ACTION

Lead: Planning Commission members

Purpose: Vote on the items discussed at Transportation Committee

CONSTRUCTION

DEPARTMENT OF PUBLIC WORKS

Rich Lallier, Director



CITY OF SAINT PAUL

Christopher B. Coleman, Mayor

*1500 City Hall Annex
25 West Fourth Street
Saint Paul, Minnesota 55102
Fax: 651-266-6222*

DRAFT

To: All Public Works staff
From: Rich Lallier, Director of Saint Paul Public Works
RE: Process for Transportation Projects
Date: June 18, 2012

In an effort to improve our department's commitment to public services and best practices, the attached documents outline our new policy regarding the process for transportation projects. All staff who work on transportation projects are expected to do their part to ensure these processes are adhered to, effective immediately. Please see your supervisors with questions. Thank you for your attention to this matter.

New Step

Saint Paul Public Works
Transportation Programs Process

For City-led Saint Paul Public Works transportation programs, the City commits to engaging in the following public process:

FUNDING APPLICATION

Lead: Public Works project manager

Purpose: Seek awards through CIB, MnDOT, Met Council, Governor's Bonding Bills, Mayor's Priority List, and other funding sources to implement adopted plans.

STAFF REPORT

Lead: Public Works project manager

Participant: Public

Purpose: Staff report posted on Transportation Committee webpages to ensure stakeholders are aware of the program in timely manner

TRANSPORTATION COMMITTEE REVIEW

Lead: Transportation Committee members

Purpose: Receive feedback (on draft funding application, when possible) to ensure that adopted plans and policies are upheld at the program level

RECEIVE FUNDING AWARD**PROJECT WEBPAGES**

Participant: Mayor's Office, Councilmembers, District Councils, Interested Parties (through Gov Delivery), general public (through website)

Purpose: Communicate the staff report, public input, additional consideration, and action on Public Works transportation program (update throughout process) to ensure stakeholders are aware of the program in a timely manner

PUBLIC PARTICIPATION

Lead: Public Works project manager

Participant: Public

Purpose: Inform

Transportation (Re)Construction Projects Process

For City-led Saint Paul Public Works transportation construction and reconstruction projects (e.g., RSVP), the City commits to engaging in the following public process:

FUNDING APPLICATION

Lead: Public Works project manager

Purpose: Seek awards through CIB, MnDOT, Met Council, Governor's Bonding Bills, Mayor's Priority List, and other funding sources to implement adopted plans.

STAFF REPORT

Lead: Public Works project manager

Participant: Mayor's Office, Councilmembers, District Councils, Interested Parties (through Gov Delivery), general public (through website)

Purpose: Ensure stakeholders are aware of project in timely manner

TRANSPORTATION COMMITTEE REVIEW

Lead: Transportation Committee members

Purpose: Receive feedback (on draft funding application, when possible) to ensure that adopted plans and policies are upheld at the project level

RECEIVE FUNDING AWARD**PROJECT WEBPAGES**

Lead: Public Works project manager

Participant: Mayor's Office, Councilmembers, District Councils, Interested Parties (through Gov Delivery), general public (through website)

Purpose: Communicate the staff report, public input, additional consideration, and action on Public Works transportation construction projects (update throughout process) to ensure stakeholders are

PROPERTY OWNER NOTIFICATION

Participant: Impacted Property owners

Purpose: Communicate basic project information, notify of public meeting

PUBLIC MEETING

Participant: Public

Purpose: Inform, receive input

TRANSPORTATION STAFF TEAM MEETING

Lead: Public Works, Planning and Economic Development, Parks and Recreation staff

Purpose: Determine whether projects hit "trigger point" of size or deviation from original scope or other and need to return to Transportation Committee.

TRANSPORTATION COMMITTEE ACTION

Lead: Transportation Committee members

Purpose: If the community process would result in a design that is a change in scope, advise whether and how to proceed with project

PLANNING COMMISSION ACTION

Lead: Planning Commission members

Purpose: Vote on the items discussed at Transportation Committee

CITY COUNCIL ACTION

Lead: City Council members

Purpose: Vote to permit construction or release funds with consideration to the Planning Commission opinion

For City-led Saint Paul Public Works transportation planning projects and studies, the City commits to engaging in the following public process:

PLAN OR STUDY INITIATION

Lead: Public Works project manager

Purpose: Formally begin work on funded plan, direct request from elected officials, or staff initiation.

DRAFT SCOPE OF WORK AND WORKPLAN

Lead: Public Works project manager

Purpose: Move forward with direct request from elected officials or staff initiation.

STAFF REPORT

Lead: Public Works project manager

Participant: Public

Purpose: Staff report posted on Transportation Committee webpages to ensure stakeholders are aware of the program in timely manner

TRANSPORTATION COMMITTEE INPUT

Lead: Transportation Committee members, public

Purpose: Receive feedback to ensure that the scope of work is in-line with Saint Paul transportation priorities; advise on typology of public and Transportation Committee participation in plan or study process.

PROJECT WEBPAGES

Participant: Mayor's Office, Councilmembers, District Councils, Interested Parties (through Gov Delivery), general public (through website)

Purpose: Communicate the public input, additional consideration, and action on Public Works transportation planning projects (update throughout process)

PUBLIC PARTICIPATION

Lead: Public Works project manager

Participant: Public

Purpose: Inform, advise and consent, involve or development of project/program.

TRANSPORTATION STAFF TEAM MEETING

Lead: Public Works, Planning and Economic Development, Parks and Recreation staff

Purpose: Determine whether projects hit "trigger point" of size or deviation from original scope or other and need to return to Transportation Committee.

TRANSPORTATION COMMITTEE PARTICIPATION

Lead: Transportation Committee members

Purpose: Inform, advise and consent, involve or development of project/program.